

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

COW PALACE, LLC; THE
DOLSEN COMPANIES; THREE D
PROPERTIES, LLC; GEORGE &
MARGARET, L.L.C.; GEORGE
DERUYTER AND SON DAIRY,
L.L.C.; D AND J DAIRY, L.L.C.
(f/k/a D AND A DAIRY, L.L.C.);
LIBERTY DAIRY, LLC; ARIZONA
ACRES LIMITED PARTNERSHIP;
LIBERTY ACRES LLC; BOSMA
DAIRY PARTNERS, LLC; BOSMA
ENTERPRISES, INC.; HENRY
BOSMA; HENRIETTA BOSMA;
and
KATHLEEN NICOLAUS,

Defendants.

NO. 1:24-CV-3092-TOR

ORDER GRANTING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION

BEFORE THE COURT is Plaintiff's Motion for Preliminary Injunction.

ECF No. 13. This matter was heard without oral argument. The Court has

ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY
INJUNCTION ~ 1

1 reviewed the record and files herein and is fully informed. For the reasons
2 discussed below, Plaintiff's Motion for Preliminary Injunction (ECF No. 13) is
3 GRANTED.

4 BACKGROUND

5 This case concerns Defendants' manure management practices at dairy
6 operations in the Lower Yakima Valley that are contaminating downgradient
7 residents' drinking water. As a result, the United States, on behalf of the U.S.
8 Environmental Protection Agency ("EPA") seeks a preliminary injunction under
9 Section 1431 of the Safe Drinking Water Act ("SDWA") requiring Defendants to
10 immediately provide alternative water to impacted residents; resume appropriate
11 monitoring of nitrate in groundwater; and address potential leakage from a manure
12 storage lagoon. The high nitrate levels in the groundwater are an extreme danger
13 to the public's health and the United States is fully authorized to take this action.

14 DISCUSSION

15 A. Preliminary Injunction

16 Pursuant to Federal Rule of Civil Procedure 65, the Court may grant
17 preliminary injunctive relief in order to prevent "immediate and irreparable
18 injury." Fed. R. Civ. P. 65(b)(1)(A). To obtain this relief, a plaintiff must
19 demonstrate: (1) a likelihood of success on the merits; (2) a likelihood of
20 irreparable injury in the absence of preliminary relief; (3) that a balancing of the

1 hardships weighs in plaintiff’s favor; and (4) that a preliminary injunction will
2 advance the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20
3 (2008); *M.R. v. Dreyfus*, 697 F.3d 706, 725 (9th Cir. 2012). Under the *Winter* test,
4 a plaintiff must satisfy each element for injunctive relief.

5 Alternatively, the Ninth Circuit also permits a “sliding scale” approach
6 under which an injunction may be issued if there are “serious questions going to
7 the merits” and “the balance of hardships tips sharply in the plaintiff’s favor,”
8 assuming the plaintiff also satisfies the two other *Winter* factors. *All. for the Wild*
9 *Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (“[A] stronger showing of
10 one element may offset a weaker showing of another.”); *see also Farris v.*
11 *Seabrook*, 677 F.3d 858, 864 (9th Cir. 2012) (“We have also articulated an
12 alternate formulation of the *Winter* test, under which serious questions going to the
13 merits and a balance of hardships that tips sharply towards the plaintiff can support
14 issuance of a preliminary injunction, so long as the plaintiff also shows that there is
15 a likelihood of irreparable injury and that the injunction is in the public interest.”
16 (internal quotation marks and citation omitted)).

17 **B. Likelihood of Success on the Merits**

18 To obtain injunctive relief, Plaintiff must show that there are “serious
19 questions going to the merits” of its claim, and that it is likely to succeed on those
20 questions of merit. *Cottrell*, 632 F.3d at 1131; *Farris*, 677 F.3d at 865. Plaintiff

1 has come forward with sufficient evidence that the nitrates are an extreme danger
2 to the public's health that draws their water from contaminated wells.

3 **C. Irreparable Injury**

4 Plaintiff contends the public will suffer irreparable injury absent preliminary
5 injunctive relief. ECF No. 13. A plaintiff seeking injunctive relief must
6 "demonstrate that irreparable injury is *likely* in the absence of an injunction."
7 *Winter*, 555 U.S. at 22 (emphasis in original). "Issuing a preliminary injunction
8 based only on a possibility of irreparable harm is inconsistent with [the Supreme
9 Court's] characterization of injunctive relief as an extraordinary remedy that may
10 only be awarded upon a clear showing that the plaintiff is entitled to such relief."
11 *Id.* "Irreparable harm is traditionally defined as harm for which there is no
12 adequate legal remedy, such as an award of damages." *Arizona Dream Act*
13 *Coalition v. Brewer*, 757 F.3d 1053, 1068 (9th Cir. 2014).

14 Plaintiff has a duty to protect the health and well-being of its residents that
15 are being affected by the high levels of nitrate. This injury is irreparable absent a
16 preliminary injunction.

17 **D. Balancing of Equities and Public Interest**

18 Finally, Plaintiff contends that the balance of equities and public interest
19 weigh in favor of granting injunctive relief in this case. ECF No. 13. "When the
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1 government is a party, these last two factors merge.” *Drakes Bay v. Oyster Co. v.*
2 *Jewell*, 747 F.3d 1073, 1092 (9th Cir. 2014).

3 “In each case, courts must balance the competing claims of injury and must
4 consider the effect on each party of the granting or withholding of the requested
5 relief.” *Winter*, 555 U.S. at 24 (quotation marks and citation omitted). The Court
6 must balance the hardships to the parties should the *status quo* be preserved against
7 the hardships to the parties should Plaintiff’s requested relief be granted. “In
8 exercising their sound discretion, courts of equity should pay particular regard for
9 the public consequences in employing the extraordinary remedy of injunction.” *Id.*
10 (quotation omitted). “The public interest inquiry primarily addresses impact on
11 non-parties rather than parties.” *League of Wilderness Defs./Blue Mountains*
12 *Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014) (citation
13 omitted).

14 More importantly, though, failure to grant injunctive relief would have a
15 significant impact on the public’s health. The public interest weighs heavily in
16 favor of granting preliminary injunctive relief.

17 CONCLUSION

18 The Court finds that Plaintiff has satisfied all elements of the *Winter* test,
19 and preliminary injunctive relief is appropriate.

1 **ACCORDINGLY, IT IS HEREBY ORDERED:**

2 Defendants' Motion to Strike the United States' Reply, ECF No. 76, is

3 **DENIED.**

4 Plaintiff's Motion for Preliminary Injunction (ECF No. 13) is **GRANTED.**

5 Defendants must immediately implement the requirements of this
6 Preliminary Injunction, as set forth in Paragraphs 1–3, and must notify the Court
7 within 14 days of any failure to comply. No bond shall be required pursuant to
8 Fed. R. Civ. P. 65(c).

9 **1. Outreach to Residents in Affected and Potentially Affected Areas for**
10 **Provision of Alternative Water**

11 Defendants shall immediately commence outreach and testing of residential
12 drinking water wells within the Affected and Potentially Affected Areas
13 (“Residential Wells”), as depicted in Appendix A to United States' Motion for
14 Preliminary Injunction, for provision of alternative water. Residential Wells
15 include wells that serve a single residence, shared wells that serve two residences,
16 and wells that serve fewer than 15 residences and fewer than 25 people per day.

17 **A. Quality Assurance Project Plan**

18 Within 30 days of entry of this Preliminary Injunction, Defendants shall
19 submit to EPA for review and approval a Quality Assurance Project Plan for
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conducting residential well testing and outreach (“2024 Residential Well QAPP”).

The 2024 Residential Well QAPP shall include:

i. Parameters and Procedures

The same parameters and procedures, including those regarding data generation and acquisition, assessment, and data validation and usability, as set forth in the Quality Assurance Project Plan for Residential Well Sampling dated April 26, 2013 (“2013 Residential Well QAPP”) submitted pursuant to the Administrative Order on Consent, EPA Docket No. SDWA-10-2013-0080, between EPA and Cow Palace, LLC; D and J Dairy, L.L.C. (f/k/a D and A Dairy, L.L.C.); George DeRuyter and Son Dairy, L.L.C.; George & Margaret, L.L.C.; Liberty Dairy, LLC and its associated Dairy Facility H&S Bosma Dairy. Winiecki Decl., Ex. A (“2013 Consent Order”). The 2024 Residential Well QAPP shall include amendments to the 2013 Residential Well QAPP only as necessary to comply with this Preliminary Injunction.

ii. Third-Party Organizations

The names and credentials of two or more independent, third-party organizations to be retained by Defendants who shall coordinate with residents in the Affected and Potentially Affected Areas and assist with delivering Spanish and English language public health-related messages. These messages will notify residents of the Affected and Potentially Affected Areas that their drinking water

1 may be impacted by elevated nitrate levels and inform residents of the health risks
2 associated with elevated nitrate levels in drinking water. The messages will also
3 provide information regarding free well testing and, for residential wells with
4 nitrate concentrations greater than 10 mg/L, availability of an alternative drinking-
5 water supply. Collectively, the selected third-party organizations shall have
6 demonstrated experience: (a) conducting meaningful engagement with
7 communities with environmental justice concerns; (b) providing public-health
8 services through community-health workers; (c) conducting community outreach,
9 including door-to-door canvassing; and (d) building relationships with residents in
10 the Lower Yakima Valley. The selected third-party organizations must have
11 sufficient personnel to accomplish the work required by this Preliminary Injunction
12 within the time frames set forth herein.

13 B. Notice to Residents of Affected and Potentially Affected Areas

14 All communications with residents in the Affected and Potentially Affected
15 Areas, including written, verbal, and in-person communication, shall be offered in
16 English and Spanish. All written communications with residents in the Affected
17 and Potentially Affected Areas, including notices of testing, explanation of results,
18 offers for alternative water, and the annual notices described in this Paragraph 1.B
19 shall be approved in advance by EPA. Annually, for the duration of this
20 Preliminary Injunction, Defendants shall notify residents in the Affected and

Potentially Affected Areas that their drinking water may be impacted by elevated nitrate levels and inform residents of the health risks associated with elevated nitrate levels in drinking water. This annual notice must inform residents in the Affected and Potentially Affected Area of the free well testing available under Paragraph 1.G and the alternative water available to residences where nitrate concentrations exceed 10 mg/L under Paragraph 1.E. Defendants shall provide notice in a form and manner that is reasonably calculated to reach all residents in the Affected and Potentially Affected Areas, based on consultation with the third-party organizations.

C. Testing of Residents' Drinking Water

Within 60 days of EPA's approval of the 2024 Residential Well QAPP, a representative of at least one of the third-party organizations that meets the requirements of Paragraph 1.A.ii(b) of this Preliminary Injunction shall visit each residence that relies on Residential Wells for drinking water in the Affected and Potentially Affected Areas on behalf of Defendants to collect a drinking water sample and submit the sample to a state-accredited drinking water laboratory for analysis. Efforts to visit each residence, including timing and follow-up contact requests, shall be reasonably calculated to achieve contact with the occupant based on consultation with the third-party organizations. Defendants must attempt a minimum of three good-faith efforts to contact each residence.

1 Prior to conducting testing at each residence, Defendants shall provide
2 notice in a form and manner that is reasonably calculated to reach all residents in
3 the Affected and Potentially Affected Areas, based on consultation with the third-
4 party organizations.

5 D. Test Results and Offer for Alternative Water

6 Within seven days of receiving any test result from the laboratory,
7 Defendants shall provide the validated laboratory result to the associated residence
8 and to EPA for each well that Defendants sampled, with a notice that explains the
9 results and the health impacts of nitrate in drinking water. For residences where
10 nitrate concentrations exceed 10 mg/L, Defendants shall include with the results an
11 unconditional offer to provide alternative water, as specified in Section 1.E.

12 E. Provision of Alternative Water

13 Within 30 days of providing any validated laboratory result to a residence,
14 Defendants shall supply and offer to install a reverse-osmosis filtration system
15 (“RO filter”) certified by an accredited third-party certification body to treat
16 nitrate, to each residence where nitrate concentrations exceed 10 mg/L and the
17 residence accepted Defendants’ offer for alternative water.

18 Within three days of receiving an acceptance from a residence in response to
19 Defendants’ offer for alternative water, Defendants shall supply to the residence at
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1 least one gallon of bottled water per person, per day, until an RO filter is supplied
2 and installed to the residence by Defendants.

3 For each residence where nitrate levels exceed the capacity of the RO filter
4 to reduce nitrate levels to 10 mg/L or below, as determined by the nitrate-reduction
5 rate specified for the RO filter, Defendants shall provide to the residence at least
6 one gallon of bottled water per person, per day. Bottled water shall likewise be
7 provided to each residence where nitrate concentrations exceed 10 mg/L but
8 installation of an RO filter is not feasible.

9 Within 30 days of providing the validated laboratory results to the residence,
10 for each residence where nitrate concentrations exceed 10 mg/L and the resident
11 has not responded to Defendants' offer for alternative water, a representative of at
12 least one of the third-party organizations that meets the requirements of Paragraph
13 1.A.ii(b) shall visit the residence, repeat the test results for that residence, explain
14 potential health impacts related to nitrate contamination in drinking water, and
15 repeat the offer for alternative water.

16 Within 45 days of providing the validated laboratory results to the residents,
17 Defendants shall provide to EPA contact information for any residences that have
18 refused alternative water or have not responded to Defendants' good-faith efforts
19 to contact the residence.

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1 F. Testing and Maintenance of RO Filters

2 Defendants shall test and maintain RO filters at all residences in the
3 Affected and Potentially Affected Area, including RO filters installed under this
4 Preliminary Injunction and RO filters previously installed at such residences, until
5 the Court terminates this Preliminary Injunction. Within 60 days of EPA's
6 approval of the 2024 Residential Well QAPP and annually thereafter until the
7 Court terminates this Preliminary Injunction, a representative of at least one of the
8 third-party organizations that meets the requirements of Paragraph 1.A.ii(b) shall
9 offer to collect from each residence with an RO filter in the Affected and
10 Potentially Affected Areas, consistent with Paragraph 1.C., a sample of untreated
11 water before it enters the RO filter and a sample of treated water after leaving the
12 system to measure the efficacy of the RO filter. Within seven days of receiving
13 test results from the laboratory, Defendants shall provide validated laboratory
14 results to the residence and to EPA, with a notice that explains the results and the
15 health impacts of nitrate in drinking water. For residences where the RO filter is
16 failing to reduce nitrate concentrations below 10 mg/L, Defendants shall offer to
17 replace the ineffective RO filter with a new RO filter or to provide bottled water in
18 the circumstances specified under Paragraph 1.E. For those residences where RO
19 filters are effective at reducing nitrate concentrations below 10 mg/L, Defendants
20 shall offer professional maintenance service for the RO filters. For those

1 residences that accept Defendants' offer to provide professional maintenance
2 service for the RO filters, Defendants shall provide such service until the Court
3 terminates this Preliminary Injunction.

4 G. Continued Testing

5 For residences without an RO filter where any validated test result indicates
6 that nitrate concentrations are between 5 mg/L and 10 mg/L, Defendants shall offer
7 to conduct quarterly testing of the residential wells until the Court terminates this
8 Preliminary Injunction, using the procedures specified in Sections 1.B-D of this
9 Preliminary Injunction. After three years of quarterly testing, for residences where
10 no quarterly test result exceeds 10 mg/L, Defendants shall offer to conduct annual
11 testing. For the duration of this Preliminary Injunction, if a resident located within
12 the boundaries of the Affected or Potentially Affected Areas makes a request to
13 Defendants or to EPA for testing, then Defendants shall test the drinking water in
14 accordance with Paragraphs 1.C. and 1.D. or, for a residence with an RO filter, in
15 accordance with Paragraph 1.F.

16 H. Completion Report

17 Within 120 days of EPA's approval of the 2024 Residential Well QAPP,
18 Defendants shall submit a report to EPA documenting efforts made by Defendants,
19 including identifying those residences contacted by Defendants, the results of
20 testing, and whether the residence received an RO filter or bottled water, already

1 had a treatment system, did not respond to the offer, or rejected the offer
2 (“Completion Report”). The Completion Report shall include copies of the
3 communications that Defendants provided to residences throughout the
4 implementation of the 2024 Residential Well QAPP regarding testing, offers of
5 alternative water, and the health impacts of nitrate in drinking water.

6 I. Annual Residential Well Report

7 Within 1 year and 30 days of entry of this Preliminary Injunction and
8 annually thereafter until termination, Defendants shall provide to EPA an annual
9 summary of: (1) all residential well testing and the results; (2) all residences where
10 Defendants provided and/or maintained RO filters; and (3) all residences for which
11 Defendants provided an alternative water supply in the Affected and Potentially
12 Affected Areas (“Annual Residential Well Report”).

13 J. Personally Identifiable Information

14 Defendants shall keep confidential all residents’ personally identifiable
15 information acquired pursuant to this Preliminary Injunction and shall share it only
16 with contractors, as needed, and with EPA.

17 **2. Continued Groundwater Monitoring**

18 The subset of Defendants subject to the 2013 Consent Order, including Cow
19 Palace, LLC; D and J Dairy, L.L.C. (f/k/a D and A Dairy, L.L.C.); George
20 DeRuyter and Son Dairy, L.L.C.; George & Margaret, L.L.C.; Liberty Dairy, LLC;

1 and its associated Dairy Facility H&S Bosma Dairy (collectively, “the Dairies”),
2 shall immediately re-commence quarterly monitoring of groundwater monitoring
3 wells installed under the 2013 Consent Order, as required below.

4 A. Quality Assurance Project Plan

5 Within 30 days of entry of this Preliminary Injunction, the Dairies shall
6 submit to EPA for review and approval a Groundwater Monitoring Quality
7 Assurance Project Plan (“2024 Groundwater Monitoring QAPP”) providing for
8 quarterly groundwater monitoring of nitrate in addition to the following field
9 parameters: dissolved oxygen; specific conductance; pH; temperature; turbidity;
10 oxidation-reduction potential; total organic carbon data; nitrite; ammonia; and
11 Total Kjeldahl Nitrogen (“TKN”). The 2024 Groundwater Monitoring QAPP shall
12 otherwise remain consistent with the procedures required under the March 2018
13 Groundwater Monitoring Quality Assurance Project Plan submitted under the 2013
14 Consent Order. *See* Winiecki Decl., Ex. D.

15 B. Groundwater Monitoring and Reporting

16 The Dairies shall conduct quarterly groundwater monitoring from the
17 existing groundwater monitoring network, in accordance with the 2024
18 Groundwater Monitoring QAPP, immediately upon EPA approval of the 2024
19 Groundwater Monitoring QAPP. Until the Court terminates this Preliminary
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1 Injunction, the Dairies shall provide to EPA a quarterly summary of groundwater
2 monitoring results (“Quarterly Groundwater Monitoring Report”).

3 **3. Testing of Cow Palace Lagoon 1**

4 Defendants Cow Palace, LLC; the Dolsen Companies; and Three D
5 Properties, LLC (collectively, “Cow Palace”) shall immediately test Cow Palace
6 Lagoon 1 to determine if the liner system at Lagoon 1 is leaking to the underlying
7 soil.

8 **A. Leak Test Plan**

9 Within 21 days of entry of this Preliminary Injunction, Cow Palace shall
10 submit to EPA for review and approval a plan to test for leakage from the upper
11 and lower liners of Lagoon 1 (“Leak Test Plan”). The Leak Test Plan shall use
12 appropriate methods under the American Society for Testing and Materials
13 (“ASTM”) standards referenced in the ASTM Standard Guide for Selection of
14 Techniques for Electrical Leak Location of Leaks in Geomembranes (“ASTM
15 Designation D6747-21”). If the upper liner must be removed to test the lower
16 liner, re-installation of the upper liner must use methods outlined in the Cow
17 Palace Dairy Facility Installation Quality Assurance and Quality Control Manual,
18 Lagoon 1 (April 18, 2018).

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1 B. Testing

2 Cow Palace shall commence testing of the liner system at Lagoon 1 within
3 30 days of EPA's approval of the Leak Test Plan. Cow Palace shall complete
4 testing within 60 days of EPA's approval of the Leak Test Plan.

5 C. Interim Storage of Lagoon Content

6 If the appropriate ASTM method requires that Cow Palace empty Lagoon 1
7 and clear any accumulated manure deposits before testing, liquid removed from
8 Lagoon 1 shall be temporarily stored in a lagoon compliant with the Natural
9 Resources Conservation Service Practice Standard 313 – Waste Storage Facility
10 (“WA NRCS 313”). If existing lagoons do not have capacity to store the contents
11 of Lagoon 1, Cow Palace shall transport the remaining contents of Lagoon 1 for
12 treatment or application outside of the Lower Yakima Valley Groundwater
13 Management Area¹ and provide transport documentation to EPA, including the
14 date and volume and name, contact information, and location of the transporting
15 and receiving facilities.

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19 ¹ As defined on the Washington State Department of Ecology's website, available
20 at <https://ecology.wa.gov/issues-and-local-projects/environmental-projects/lower-yakima-valley-groundwater-management-area>.

1 D. Completion Report

2 Within 30 days of completing testing for leakage at Lagoon 1, Cow Palace
3 shall submit a Leak Test Completion Report to EPA. The Leak Test Completion
4 Report shall document Cow Palace's activities implementing the Leak Test Plan,
5 document with photographs the condition of each liner at the time of testing and
6 provide the results of testing.


7 E. Action to Repair Leak

8 If a leak is detected from the upper or lower liners of Lagoon 1, Cow Palace
9 shall take immediate action to repair the leak. Within 21 days of submitting the
10 Leak Test Completion Report, Cow Palace shall submit to EPA for review and
11 approval a Liner Repair Plan specifying repair procedures consistent with those
12 obtained from the manufacturer and to be performed in accordance with the
13 manufacturer's specifications. Cow Palace shall implement the Liner Repair Plan
14 within 30 days of EPA approval.

15 The District Court Executive is directed to enter this Order and furnish
16 copies to counsel.

17 **DATED** December 17, 2024.




THOMAS O. RICE
United States District Judge